

IN THE CHANCERY COURT FOR LOUDON COUNTY TENNESSEE

JOHN WESELY COOPER )

PLAINTIFF, )

Vs. )

THE LOUDON COUNTY BOARD )  
OF ZONING APPEALS, AND )  
LOUDON COUNTY, )

DEFENDANTS. )

DOCKET NO. 11272

FILED 17 DAY OF July 2008  
Fred Crumey  
CLERK & MASTER

*swd*

WRIT OF CERTIORARI PURSUANT TO T.C.A. § 27-8-101, et. seq. AND/OR PETITION  
FOR REVIEW PURSUANT TO T.C.A. § 27-9-101, et. seq.

Comes the Plaintiff, John Wesley Cooper, under oath and by and through counsel, pursuant to T.C.A. § 27-8-101, et. seq. and/or T.C.A. § 27-9-101, et. seq. and prays for this honorable Court to review and reverse the decision of the Loudon County Board of Zoning Appeals as more fully set forth below and for cause of action against the Defendants states as follows:

1. Plaintiff, John Wesley Cooper, (Hereinafter "Cooper") is a citizen and resident of Loudon County Tennessee residing at 223 Chickasaw Lane, Loudon, Tennessee,

2. The Defendant Loudon County Board of Zoning Appeals (Hereinafter the "Board") is a Board consisting of various members appointed by the Loudon County Commission and can be served through its Chairman, Charles Harrison, 234 Harrison Road Loudon County Tennessee 37774.
3. The Defendant Loudon County is a duly authorized County of the State of Tennessee and can be served through the County Attorney, Robert Bowman, at 800 South Gay Street, Knoxville, TN 37929-2600.
4. In the Spring of 2007, Cooper applied for a building permit to construct a residence in Loudon County Tennessee to be located at 223 Chickasaw Lane, Loudon, Tennessee, which building permit No. 11299 was issued by the Loudon County Building Commissioner by and through his designees and/or employees.
5. On or about May 25 2007 Loudon County pursuant to T.C.A. § 67-4-2901 et. seq., known as the County Powers Relief Act, provided Cooper with an "Estimate of School Facilities Privilege Tax Liability" stating the estimated tax was \$3,039.00 based on 3039 square feet of "Heated/Cooled living space which represented the upstairs portion of the home to be finished as living space.
6. On final inspection on or about May 1 2008, the County through its building inspector and/or designated employees claimed that Cooper deviated from the building permit and claimed that Cooper was liable for double the above referenced tax or \$5078.00 based on what the County claimed was 6078 square feet of heated and cooled living space which would include the unfinished basement of the home which was not at the time nor is at this time heated or cooled living space. The downstairs of the home is unfinished. It is not heated nor is it air-conditioned.

7. Cooper, in accordance with Loudon County Resolution 100206 and the instructions of the Building Inspector, filed an appeal with the Loudon County Zoning Appeals Board requesting that the County revise the tax assessment to reflect the proper tax amount based on the original estimate and that the tax be levied on the heated and cooled square footage of living space of the home which is 3039 square feet which consists of the finished upstairs portion of the home. The down stairs portion of the home is unfinished concrete floors, block walls, open support walls with roughed in plumbing pipe and duct work that has no HVAC unit attached to it or in place to be attached. The only HVAC system on the property serves and is ducted only to the upstairs of the home which duct work runs in the attic. There is no connection between the upstairs HVAC unit and the roughed in duct work in the downstairs. In order to heat or air-condition the downstairs, a separate HVAC unit would have to be installed along with a separate pad, wiring etc... none of which is in place nor contemplated to be installed for the foreseeable future.
8. The Board of Zoning Appeals denied Coopers appeal on or about June 17, 2008 or June 18, 2008. The Board took the position that the mere presence of roughed in duct work alone without any HVAC unit in place or existing was sufficient for them to levy the tax, despite the fact that the downstairs of the Cooper home in its unfinished condition does not meet the clear definition of "floor area" upon which the tax is to be based because it "is not heated or air-conditioned living space" as defined by T.C.A. § 67-4-2903 (8).
9. Subsequent to the denial of the appeal by the Board, Cooper advised Loudon County through various of its officials including the County Mayor, Doyle Arp, the County Trustee and the Building Inspector, and the Loudon County attorney, among others of Cooper's intention to appeal the decision of the Board unless the County revised the tax

assessment to the correct amount of \$3039.00 based on the actual heated and cooled living space of the home as defined in the County Powers Relief Act.

10. On or about July 3, 2008 Loudon County, through the Loudon County Attorney, reached a settlement agreement with Cooper of the disputed tax issue and agreed to revise the tax assessment to \$3039.00. A copy of the communications confirming the settlement agreement are attached hereto and incorporated herein as EXHIBIT 1.
11. The decision of the Loudon County Board of Zoning Appeals in denying Coopers appeal of the determination of the Building Inspector 's decision as to the amount of heated and cooled living space or the amount of "floor area" subject to taxation under the County Powers Relief act was and is contrary to the law, arbitrary , capricious and illegal.
12. The Loudon County Mayor, Doyle Arp, issued a directive to Bill Cox, Loudon County Building Commissioner, on July 16, 2008, instructing the Building Commissioner to revise the tax due to properly reflect the actual amount of heated and air-conditioned living space or "floor area" as defined under the law. The Building Commissioner has to date refused to comply with the County Mayor's instructions or directive. A copy of the memo from Mr. Arp to the Building Commissioner is attached as EXHIBIT 2.

WHEREFORE, Plaintiff Cooper prays:

1. That proper process issue and be served on the Defendants requiring them to answer this Complaint.
2. That the Court issue an order to the Defendants to copy and forward to the Court a complete copy of the administrative record below including a typed transcript of the

video and/or audio of the Board hearing, the original video and/or audio tapes and all documents and records in the possession of the Defendants relating to the matter.

3. That the court conduct a hearing pursuant to the above referenced statutes, consider the record in this cause and any other evidence to be introduced by the parties and thereafter order the reversal of the denial of the Loudon County Board of Zoning Appeals as to the disputed issue of tax due under the County Powers relief Act.
4. Alternatively that the Court order the enforcement of the settlement agreement reached between Cooper and the Defendants.
5. For all attorney fees and expenses incurred by Cooper as a result of the County's breach of the settlement agreement which resulted in the need for this filing and all subsequent proceedings.
6. For such further and general relief to which the Court finds Plaintiff entitled.

RESPECTFULLY SUBMITTED THIS THE 17 DAY OF July, 2008.

ARNETT, DRAPER & HAGOODE

BY: 

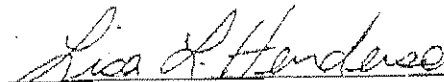
Samuel C. Doak BPR# 013213  
Arnett, Draper & Hagood  
800 South Gay Street  
Knoxville, TN 37929-2300  
(865) 546-7000

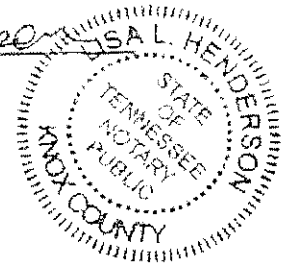
OATH

The undersigned, after being duly sworn, swears and affirms that the allegations in the above referenced petition are true to best of my knowledge, information and belief.

  
John Wesley Cooper

Sworn to and subscribed before me, this the 17<sup>th</sup> day of July, 2008.

  
Notary Public



My Commission Expires 11-07-2010

COST BOND

We do hereby acknowledge and bind ourselves as sureties for the costs of this cause as required by T.C.A. § 20-12-120.

ARNETT, DRAPER & HAGOOD

By:   
SAMUEL C. DOAK

Sam C. Doak

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**From:** Sam C. Doak  
**Sent:** Thursday, July 03, 2008 11:12 AM  
**To:** wcooper@cooperhomes.com  
**Subject:** FW: Wes Cooper Tax Issue

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**From:** Betsy Beck [mailto:bbeck@kramer-rayson.com]  
**Sent:** Thursday, July 03, 2008 11:02 AM  
**To:** Sam C. Doak  
**Cc:** Doyle.Arp@loudoncounty-tn.gov  
**Subject:** RE: Wes Cooper Tax Issue

Sam:

You are correct about the revised tax assessment.

Mayor Arp, Estelle, and Bill are going to talk early next week about how to go about documenting the revised decision. At the very least, Estelle will re-send a tax assessment to Mr. Cooper with the new amount based on our agreement. The remainder of the issue (how to reflect in the County's records why the tax amount was revised) will be dealt with on Monday when the Mayor, Estelle and Bill meet.

Thanks and have a great weekend,  
Betsy

**Betsy J. Beck, Attorney**  
Kramer Rayson LLP  
P O. Box 629  
Knoxville, TN 37901-0629  
Office: 865.525.5134  
Fax: 865.522.5723

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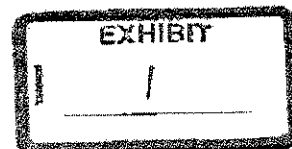
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**From:** Sam C. Doak [mailto:SDoak@adhknox.com]  
**Sent:** Thursday, July 03, 2008 10:33 AM  
**To:** Betsy Beck  
**Cc:** wcooper@cooper-homes.com  
**Subject:** RE: Wes Cooper Tax Issue

Betsy,



This will confirm the agreement reached and our follow telephone conversations subsequent to the below e-mail.

I am pleased we were able to settle this issue without the need for an appeal of the decision made by the Zoning Board. In consideration of the agreement reached, we will not proceed with any appeal of that decision.

As we discussed, the documentation I have from the original estimated assessment dated 5/25/07 was that the finished square footage in the upstairs was 3039 square feet (SF) and the original estimate of the tax was \$3039.00 based on \$1.00 per SF. That is the figure that was doubled on final inspection. Based on the agreement reached and confirmed in our last telephone conversation, we are in agreement that the tax due will be the \$3039.00 based on the finished square footage of 3039 SF.

As we also discussed, since the Zoning Board previously denied the appeal, the county record would currently show the tax due of \$6078.00. It would appear that something will need to be documented to show the Zoning Board denial has been reconsidered/revised. Please send me a copy of the documentation that is prepared or filed in the county records from the Zoning Board and/or the Trustee to reflect that the tax due is the revised amount so that Mr. Cooper can proceed with payment of the revised tax amount and so that there is no future issue about any deficiency when the property is conveyed.

Best,  
Sam

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**From:** Betsy Beck (mailto:bbeck@kramer-rayson.com)  
**Sent:** Thursday, July 03, 2008 9:39 AM  
**To:** Sam C. Doak  
**Subject:** Wes Cooper Tax Issue

Sam:

This will confirm our telephone conversation this morning wherein I advised that Loudon County will re-assess the school facilities privilege tax charged to Wes Cooper. Upon final inspection of Mr. Cooper's home, Loudon County assessed a school facilities privilege tax at double the tax that was estimated when Mr. Cooper obtained his building permit. Loudon County's decision was based on the presence of ductwork for heating and air conditioning units in the unfinished portion of Mr. Cooper's house. Mr. Cooper denied that the unfinished portion of his house is "living space" as defined by the statute and disputed the doubled tax.

The legislature provided little help in interpreting "living space," and the County applied its interpretation of the term "living space" consistently. However, as we discussed this morning, Loudon County does not wish to expend its resources to fight this battle in court. After discussions, the County has re-evaluated its position regarding the interpretation of "living space." As a result, the County will re-assess Mr. Cooper's tax at an amount based on the square footage of the finished portion of the house. If you have any further questions, please do not hesitate to call me.

Thanks,  
Betsy Beck

**Betsy J. Beck, Attorney**  
Kramer Rayson LLP  
P.O. Box 629  
Knoxville, TN 37901-0629  
Office: 865.526.5134  
Fax: 865.522.6723

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DOYLE ARP  
London County Mayor

100 River Road, Box 106  
London, TN 37774  
www.londoncounty.org



Phone: (865) 458-4664  
Fax: (865) 458-1784  
dap@londoncounty.org

TO: BILL COX, LONDON COUNTY BUILDING COMMISSIONER

FROM: DOYLE ARP

DATE: JULY 16, 2008

RE: DEFINITION OF "FLOOR AREA" FOR THE ADEQUATE FACILITIES TAX

As I previously explained to you, state law allows London County to calculate the Adequate Facilities Tax ("AFT") "on the floor area of residential development." Tenn. Code Ann. § 67-4-2903. State law defines "floor area" as "the gross horizontal area of all floors, including basements, cellars, or attics, that is heated or air-conditioned living space." Tenn. Code Ann. § 67-4-2903(8).

London County resident, Wes Cooper, recently challenged and threatened to sue the County over the fact your office interpreted "floor area" as including any room containing HVAC duct work. The basement of the Cooper residence contains duct work, but there is not an HVAC unit connected to the duct work. Thus, the basement cannot be considered "floor area" based on the plain language of the statute.

London County should not incur legal fees defending a position that is clearly inconsistent with the plain language of Tenn. Code Ann. § 67-4-2903(8).

If the Tennessee General Assembly or a Tennessee appellate court revises the definition of "floor area" to include rooms containing only duct work, then London County will reassess the application of the AFT to such spaces at that time. Until then, it makes very little economic sense to spend County funds to advocate a position contrary to the plain language of the statute.

The record should be clear that Mr. Cooper's basement is not subject to the AFT because there is no HVAC unit connected to the duct work. If that space was "heated or air-conditioned" it would be subject to the AFT pursuant to the statute.

Accordingly, please re-compute the tax liability for Mr. Cooper's residence consistent with state law and this memorandum and submit the calculation to the Trustee.

cc: Estelle Huron, London County Trustee

